

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: August 31, 2005

TO : Joseph P. Norelli, Acting Regional Director
Region 20

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: USPS
Case 20-CA-32527

530-6067-6033-8800

This Section 8(a)(5) case alleging that the Employer unlawfully failed to provide the Union with requested information was submitted for advice as to whether the Region should defer the matter to the parties' arbitral process.

We conclude that the Region should dismiss this charge, absent withdrawal. Thus, the evidence as it now stands is insufficient to establish that the Employer violated the Act by failing to make a good faith effort to supply information to the Union reaching back 17 years.¹

FACTS

In 1992, the American Postal Workers Union filed a grievance against the US Postal Service alleging that the USPS violated the parties' collective bargaining agreement by using casual employees to perform custodial work instead of filling open positions with permanent, full-time employees. At the close of an arbitral hearing on March 23, 2005,² arbitrator Matthew Goldberg directed the USPS to provide the Union with documents establishing the affected casual employees' work hours and gross pay after 1988.³ The

¹ Because the instant matter currently does not present a violation of Section 8(a)(5), the Region's request for advice as to whether to defer the charge administratively is not relevant at this time.

² All dates are in 2005 unless specified otherwise.

³ The parties do not agree as to whether the arbitrator ordered the USPS to provide the Union with pay information from 1988 to the present, or just through 1993. The USPS states that it discontinued the practice of using casuals in this manner in 1993, but has not yet given the Union evidence to support its claim. The Union has indicated it will drop its request for post-1993 information upon receipt of evidence supporting the USPS's claim.

arbitrator ordered the release of this information to allow the Union to develop a proposed remedy in its post-hearing arbitral brief.

To date, the USPS has not yet provided the Union with this information. It states that it has searched through three repositories of documents, but that pay information from up to 17 years ago is not readily available. In March, USPS representative Ida Sanchez learned that the local San Francisco Finance Office was required to keep wage information only for three years. She subsequently learned that the Washington, DC USPS headquarters only has access to this information dating back to 1993. Thus, on May 26, Sanchez submitted a written request for the relevant information to the Employer's Finance Department located in Eagan, MN. In early July, the Finance Department replied that they were developing a computer program that would gather the information, if it still exists. The Finance Department told Sanchez that the process would take a minimum of 6-8 weeks.

Sanchez relayed the Finance Department's intentions to USPS representative Idowu Balogun. Sanchez asked Balogun for the Union's agreement to an extension of time to September 16 to file post-arbitral briefs. Balogun agreed because he "needed the information" that the Union had requested in order to submit a brief. By letter dated July 5, Sanchez notified the arbitrator of the agreed-upon extension of time to file briefs. She further requested a conference call to discuss the USPS's difficulty in providing the Union with the requested information. No teleconference occurred, however, because Balogun was on vacation and could not meet during the requested time period.

On August 8, Balogun called Sanchez to inquire about the status of the information request. Sanchez responded that the Finance Department could not read the list of relevant casual employees that Balogun had forwarded her. Balogun promised to e-mail Sanchez another copy. Sanchez stated again that it would take 6-9 weeks for the USPS to find the information.

ACTION

We conclude that the Region should dismiss this charge, absent withdrawal. Thus, the evidence as it now stands is insufficient to establish that the Employer is failing to

make a good faith effort to supply information to the Union reaching back 17 years.

An employer has an obligation under Section 8(a)(5) to comply with a union's request for information that is relevant to the processing of grievances unless there is a showing that the information is unduly burdensome, legitimately confidential, privileged in nature or has been waived.⁴ An employer's bad faith delay in satisfying an outstanding information request may constitute a failure to bargain.⁵ However, a delay in providing information may not rise to the level of a Section 8(a)(5) violation where the information is difficult to retrieve, the union is kept abreast of the employer's efforts to satisfy the request, and the union is not prejudiced by the delay.⁶

We cannot conclude at this point that the Employer's delay in satisfying the Union's request for information stretching back 17 years constitutes an unlawful failure to bargain. Clearly, the USPS is having difficulty locating wage information dating back to 1988. Between March and June, the Employer searched three repositories of records for the requested wage information. The USPS has responded to the Union's inquiries by explaining the search process when in July it notified the Union that it may have found the information. The Union agreed to an extension of time to file post-arbitral briefs to allow the Employer further time

⁴ NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979).

⁵ See, e.g., Detroit Newspaper Agency, 317 NLRB 1071, 1072 (1995) (employer that took seven months to provide union with redacted copy of audit in its possession violated Section 8(a)(5); employer must provide relevant information reasonably promptly in useful form); General Electric Co., 290 NLRB 1138, 1147 (1988) (a delay of one year and three months after the union made an oral request and 10 months after written request was dilatory and unreasonable; employer's good faith placed into doubt where it made unnecessary requests for further clarification of union's request for information).

⁶ See AMCAR Div., ACF Industries, 234 NLRB 1063, 1076 (1978), enfd. as modified 596 F.2d 1344 (8th Cir. 1979) (a 4 1/2 month delay in receiving requested information, although not to be condoned, was not sufficiently serious as to constitute a violation of employer's collective-bargaining obligations where there was no evidence that the unions were prejudiced by the delay and the employer had advised the unions that compiling the information would be difficult).

to retrieve the data. In August, the Employer asked the Union to resend it a list of casual employees for whom the data is requested, and the Union agreed. The Employer estimated that it would take an additional 6-9 weeks to provide the information. That period has not yet elapsed. The Union's July agreement to an extension of time to file post-arbitral briefs to allow the USPS to continue to search for the information, further indicates that the Union has not been prejudiced by the Employer's delay in providing it with the information.

Accordingly, inasmuch as the evidence is insufficient to establish a failure to bargain, the Region should dismiss the charge, absent withdrawal. [FOIA Exemption 5

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B.J.K.